STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	**CASE NUMBER DWS23-0190**
	)	
DEPARTMENT OF ENVIRONMENT	)	
AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	
	)	
TOWN OF TELLICO PLAINS	)	**DOCKET NUMBER 04.02-244954J**
TENNESSEE,	)	**JUDGE MARK GARLAND**
	)	
Respondent.	)	

DEPARTMENT'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR COSTS AND ATTORNEYS' FEES

The petitioner, Department of Environment and Conservation ("Department"), by and through counsel, respectfully submits the following response in opposition to the respondent Tellico Plains' ("Respondent")'s Motion for Respondent's Costs ("Motion for Costs"). The Respondent is not entitled to either costs or attorneys' fees because the Respondent was not the prevailing party at the contested case hearing and the statutory sections cited in the Motion for Costs do not permit recovery of costs or attorneys' fees in this case.

First, and fundamentally: only prevailing parties are entitled to costs and attorneys' fees. *See, e.g., Fannon v. City of Lafollette*, 329 S.W.3d 418 (Tenn. 2010); *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303 (Tenn. 2009); *In re Ra'Niyah T.*, 2014 Tenn. App. LEXIS 547, at *41 (denying Mother's request for costs and attorneys' fees because she was the losing party in the case). This foundational legal rule is reflected in the Tennessee Rules of Civil Procedure: "Costs included in the bill of costs prepared by the clerk shall be allowed to the

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prevailing party unless the court otherwise directs." Tenn. R. Civ. P. 54.01(1) (emphasis added). The Initial Order entered on September 30, 2025 ("Initial Order") found that "the Department met its burden of proof on the issue of liability and that the violations at issue [in the Director's Order] occurred." Initial Order, at 17. The Initial Order further held that the Department proved "by a preponderance of the evidence that its civil penalty calculation [in the Director's Order was] appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious." *Id.* While the Initial Order voided certain corrective action requirements, there can be no doubt that the Department is the prevailing party in this case, not the Respondent. As such, the Respondent is not entitled to costs or attorneys' fees under Tennessee law, the Respondent's Motion for Costs is frivolous, and this tribunal should not entertain it.

The Respondent's Motion for Costs should fail on the first reason alone. But there is a second reason the motion must fail, and that is because "costs against the state, its officers, or its agencies shall be imposed only to the extent permitted by law." Tenn. R. Civ. P. 54.04(1). The Town claims that its request for costs is permitted by the Uniform Administrative Procedures Act, specifically section 4-5-325(a). But section -325(a) does not avail the Town. Subsection (a)(1)(A) only permits costs, which include reasonable attorneys' fees, when the state agency's claims "[were] not warranted by existing law nor by a nonfrivolous argument for the extension or modification of existing law" and "[t]he claims . . . do not have evidentiary support." Tenn. Code Ann. § 4-5-325(a)(1)(A). As explained in the Initial Order, the Department's claims in the Director's Order were clearly warranted by the SDWA and the claims did have sufficient evidentiary support.[1]

[1] In fact, the Department's claims were so well supported by the evidence in the record that the Department received a grant of partial summary judgment on the issue of liability. The Order Granting Partial Summary Judgment, entered on May 6, 2025, affirmed 12 of the 15 Safe Drinking Water Act (SDWA) violations assessed in Director's Order No.

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Subsection (a)(1)(B) permits the recovery of costs and attorneys' fees when "the state agency issued the notice to harass, cause unnecessary delay, or cause needless expense to the party issued the notice." Tenn. Code Ann. § 4-5-325(a)(1)(B). This statutory provision likewise does not avail the Town in support of its Motion for Costs. As the record amply demonstrates, the Director's Order was issued to address Respondent's violations of the SDWA. Initial Order, at 8. Aside from referencing a single email—which is deeply unpersuasive when weighed against the overwhelming testimony from multiple Departmental witnesses during the contested case hearing—the Respondent cites no evidence that the Director's Order was issued to harass or cause unnecessary delay or expense to Tellico Plains. Respondent's one and only citation to case law in support of its motion, *Am. Child Care v. State*, is easily distinguishable from this case. *Am. Child Care v. State*, 83 S.W.3d 153 (Tenn. Ct. App. 2001). In *Am. Child Care*, the Tennessee Court of Appeals found that the state agency's "action in summarily suspending the center's license was not well-grounded in fact, because there was not an adequate investigation in implementing the zero tolerance policy. The agency also acted outside of existing law in applying its zero tolerance policy." *Id.* at 153. Here, the Director's Order was well-grounded in fact, supported by an adequate investigation into the violations alleged, and was issued within the bounds of its authority under existing law. *See* Initial Order, at 17-18.

Tennessee follows the American Rule for awarding attorneys' fees. *Fannon*, 329 S.W.3d at 432. "[T]he 'American Rule' requires litigants to pay their own legal fees and costs absent a contractual agreement or statutory provision to the contrary." *Id.* Here, the Town attempts to cite Tennessee Code Annotated section 4-5-325(a) in support of its requests for attorneys' fees. For the

DWS23-0190 ("Director's Order"). Only 12 were affirmed because the Department elected not to pursue 3 of the 15 violations alleged in the Director's Order.

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same reasons that its request for costs must fail, the Town's request for attorneys' fees must also fail.

For the reasons set forth above, Respondent has not stated a sufficient basis for an award of costs or attorneys' fees under Tennessee law. The Department respectfully requests that the Respondent's Motion for Costs be denied.

Respectfully submitted on October 14, 2025.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been sent to the following by electronic mail on October 14, 2025.

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